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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Policy and Rules Concerning the Interstate,  
Interexchange Marketplace )

Implementation of Section 254(g) of the  
Communications Act of 1934, as amended )

CC Docket No. 96-61

To: The Commission

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**REPLY COMMENTS OF BELL SOUTH (PHASE I)**

John F. Beasley  
William B. Barfield  
Jim O. Llewellyn  
1155 Peachtree Street, NE, Suite 1800  
Atlanta, GA 30309-2641  
(404) 249-4445

David G. Frolio  
David G. Richards  
1133 21st Street, NW  
Washington, DC 20036  
(202) 463-4132

*Its Attorneys*

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## SUMMARY

BellSouth restates herein that the Commission should retain its existing relevant product and market definitions for interstate, interexchange carriers and should not adopt more narrowly drawn market definitions. Accordingly, BellSouth agrees with AT&T and other commenting parties that the relevant market is all domestic interstate interexchange services nationwide. AT&T's assertion, however, that this single national geographic and product market is not relevant for assessing BOC entry into the market is baseless and transparent.

AT&T's argument that BOC control of bottleneck access facilities should be the yardstick against which BOC provision of interLATA services should be based is an attempt to misdirect the focus away from the relevant nationwide interexchange market. The true issue is whether the BOCs have market power in the relevant market—all domestic interstate interexchange services nationwide. While BOCs may have market power in the local exchange market, this does not equate to market dominance in the provision of interexchange service. Instead, the Commission must determine whether the BOCs local exchange presence translates into market power in the relevant nationwide interexchange market.

AT&T's attempt to have the Commission focus upon defining relevant local markets for purposes of assessing BOC market power with respect to in-region interexchange services confuses the statutory standards. The Commission's determination under Section 271(d)(3)(A), as to whether the Section 271(c)(2)(B) *checklist* has been satisfied, requires an examination of whether local competition exists and properly focuses on smaller geographic markets. Issues of local market power are irrelevant, however, to the Commission's Section 271(d)(3)(C) *public interest* determination, which must focus on *the effect of BOC entry on the interexchange market*. Accordingly, the public interest determination must focus solely on the competitive effects of BOC entry in the *interexchange* market. In this regard, BOC entry will undermine the interexchange oligopoly.

Finally, AT&T's argument that the Commission should focus on a new integrated local/interexchange services product market is self-serving. AT&T only recently argued against the existence of an integrated market and in favor of separate local markets in the AT&T-McCaw merger proceeding. The Commission agreed with AT&T in that proceeding and likewise rejected the establishment of an integrated local/interexchange market. The Commission should dismiss AT&T's change of position in this proceeding, which is little more than an effort to keep potential new competitors—the BOCs—out of the interexchange market.

## **TABLE OF CONTENTS**

<b>SUMMARY</b> .....	<b>i</b>
<b>I. BELL SOUTH AGREES WITH AT&amp;T AND OTHER COMMENTERS THAT THE DEFINITION OF THE RELEVANT MARKET AS ALL DOMESTIC INTERSTATE INTEREXCHANGE SERVICES NATION-WIDE SHOULD BE RETAINED</b> .....	<b>1</b>
<b>A. BellSouth Agrees with AT&amp;T that the Commission's Existing Relevant Market Definition Is Correct and that the Narrower Definition Proposed in the NPRM Should Not Be Adopted</b> .....	<b>3</b>
<b>B. AT&amp;T's Assertion that a Single National Geographic and Product Market is the Relevant Market, <i>But Not for Purposes of Assessing BOC Entry into that Market</i>, Is Baseless and Transparent</b> .....	<b>5</b>
<b>1. AT&amp;T's Argument that BOC Control of Bottleneck Access Facilities Should Be the Yardstick Is an Attempt to Misdirect the Focus Away from the Relevant Nationwide Interexchange Market</b> .....	<b>7</b>
<b>2. The Section 271 Checklist Concerning Local Competition Properly Focuses on Smaller Geographic Markets, Unlike the Section 271 Public Interest Determination, Which Focuses on the Effects of BOC Entry into the Nationwide Interexchange Market</b> .....	<b>9</b>
<b>3. AT&amp;T's Argument that the Commission Should Focus on a New Integrated Local/Interexchange Services Product Market Is Self-Serving and Inconsistent with FCC Decisions and AT&amp;T's Own Prior Positions</b> .....	<b>13</b>
<b>CONCLUSION</b> .....	<b>15</b>

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To: The Commission

**REPLY COMMENTS OF BELL SOUTH (PHASE I)**

BellSouth Corporation ("BellSouth"), by its attorneys, hereby replies to the comments submitted in response to Sections IV, V, and VI of the Commission's *Notice of Proposed Rule Making*, CC Docket No. 96-61, FCC 96-123 (released Mar. 25, 1996), *summarized*, 61 Fed. Reg. 14,717 (1996) ("NPRM"). In particular, BellSouth responds to those parties, notably AT&T, addressing the Commission's proposal to narrow the relevant product and geographic market definitions for interstate, interexchange carriers.

**I. BELL SOUTH AGREES WITH AT&T AND OTHER COMMENTERS THAT THE DEFINITION OF THE RELEVANT MARKET AS ALL DOMESTIC INTERSTATE INTEREXCHANGE SERVICES NATIONWIDE SHOULD BE RETAINED**

In its comments, BellSouth urged the Commission to retain its current broad definition of the relevant market, defined as all domestic interstate interexchange telecommunications services nationwide, with no relevant submarkets.<sup>1</sup> BellSouth noted that just last year the Commission

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<sup>1</sup> BellSouth Comments at 9-12; see *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore*, CC Docket No. 79-252, *Fourth*

readopted this definition in the *AT&T Non-Dominance Order*,<sup>2</sup> stating “[w]e see no basis for determining whether AT&T is non-dominant under a different standard than that used for classifying its competitors.”<sup>3</sup> Similarly, the Commission relied on the existence of a single nationwide market for interstate interexchange services as the basis for its determination in the AT&T-McCaw merger case that there was no separate market or submarket for cellular-originated interexchange services in McCaw’s cellular markets.<sup>4</sup> Nevertheless, the Commission is now considering adoption of more narrowly drawn market definitions to evaluate BOC entry.

Like BellSouth, AT&T and other commenting parties addressing the issue agree that the Commission’s existing relevant market definition is correct and that the Commission has properly defined the interexchange market as a single national market.<sup>5</sup> Therefore, according to AT&T, the “Commission’s proposals to revise the established interexchange market definitions . . . should not be adopted.”<sup>6</sup> AT&T also emphasizes that the Commission’s proposed revisions to existing market definitions “are inconsistent with settled economic and legal principles, including the Merger

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*Report and Order*, 95 F.C.C.2d 554, 563-64, 574-75 (1983) (*Fourth Report and Order*), vacated *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, *MCI Telecommunications Corp. v. AT&T*, 113 S. Ct. 3020 (1993); *Fourth Further Notice of Proposed Rulemaking*, 96 F.C.C.2d 1191 (1984); *Fifth Report and Order*, 98 F.C.C.2d 1191 (1984) (*Fifth Report and Order*); *Sixth Report and Order*, 99 F.C.C.2d 1020 (1985) (*Sixth Report and Order*), vacated *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (collectively the *Competitive Carrier Proceeding*).

<sup>2</sup> *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 1 Com. Reg. (P & F) 63 (1995) (*AT&T Non-Dominance Order*).

<sup>3</sup> *Id.* at 72.

<sup>4</sup> *See Craig O. McCaw*, 9 F.C.C.R. 5836, *aff’d sub nom. SBC Communications, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

<sup>5</sup> *See* Comments of AT&T at 5; Ameritech at 13; Bell Atlantic at 5; Florida Public Service Commission at 6-9; NYNEX Comments at 5-7; Pacific Telesis Group at 4-8; SBC Communications, Inc. at 2-5; U S West at 2-3; United States Telephone Association at 13.

<sup>6</sup> AT&T Comments at 4.

Guidelines.”<sup>7</sup> Nevertheless, once AT&T states emphatically that the existing single national market definition is the relevant market, it argues that the nationwide domestic interstate interexchange market is *not relevant* for purposes of considering petitions of the Bell Operating Companies (“BOCs”) to enter that market. As discussed below, this position is not sustainable.

**A. BellSouth Agrees with AT&T that the Commission’s Existing Relevant Market Definition Is Correct and that the Narrower Definition Proposed in the NPRM Should Not Be Adopted**

AT&T argues that the Commission’s existing market definition is correct, because the single nationwide market for domestic interstate interexchange service, with no relevant submarkets, “accurately describes ‘the realities of competition.’”<sup>8</sup> According to AT&T, “‘there is no significant difference between the interexchange facilities used to provide’ the many different services offered in that intensely competitive market. . . . Thus, . . . numerous interexchange suppliers could (and would) use *existing* interexchange facilities to divert customers away from any hypothetical ‘monopolist’ foolish enough to attempt to charge anticompetitive rates for any interexchange service.”<sup>9</sup> BellSouth agrees with AT&T that this is the proper market definition. As AT&T noted, the Commission has long recognized that in interexchange service, supply substitutability “means that there is a single product market—because competing carriers can quickly and costlessly shift all or a portion of their idle or otherwise employed facilities to the production of any interexchange service sought to be ‘monopolized.’”<sup>10</sup>

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<sup>7</sup> AT&T Comments at ii; *see id.* at 4.

<sup>8</sup> *Id.* at 2, 4, 14 (quoting *Balaklaw v. Lowell*, 14 F.3d 793, 799 (2d Cir. 1994) (citation omitted)).

<sup>9</sup> *Id.* at 15 (quoting *AT&T Non-Dominance Order*, 1 Com. Reg. (P & F) at 72 (citation and footnote omitted)).

<sup>10</sup> *Id.* at 16 (quoting *AT&T Non-Dominance Order*, 1 Com. Reg. (P & F) at 72).

Furthermore, BellSouth agrees with AT&T that a single geographic market is correct, and that the focus should be on "the commercial realities which 'check the prices charged' to consumers."<sup>11</sup> The geographic scope of the relevant market must reflect supply and demand substitutability considerations, and "patterns of demand across geographic points favor a nationwide geographic market."<sup>12</sup> Moreover, supply substitutability shows the market is nationwide, because "[s]everal interexchange suppliers have nationwide networks with the capability to provide alternative routings' . . . and because 'carriers have been able to enter and expand rapidly to serve a pair of points by constructing new facilities to supplement their networks, interconnecting, or reselling the services of other carriers.'"<sup>13</sup> The Commission rejected the point-to-point approach fifteen years ago and again two years ago, specifically because "many networks have alternative routing capabilities with nationwide or near nationwide service areas."<sup>14</sup> Accordingly, BellSouth concurs with AT&T that "only a national geographic market is consistent with the 'realities of the marketplace.'"<sup>15</sup>

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<sup>11</sup> *Id.* at 18 (quoting *Competitive Carrier Proceeding, Fourth Report and Order*, 95 F.C.C.2d at 573).

<sup>12</sup> *Id.* at 19 (quoting *Competitive Carrier Proceeding, Fourth Report and Order*, 95 F.C.C.2d at 574).

<sup>13</sup> *Id.* at 19 (quoting *Application of GTE Corp. & S. Pac. Co. for Consent to Transfer Control of S. Pac. Communications Co. & S. Pac. Satellite Co.*, 94 F.C.C.2d 235, 250 (1983); *Competitive Carrier Proceeding, Fourth Report and Order*, 95 F.C.C.2d at 573).

<sup>14</sup> *Id.* at 20 (quoting *Application of MCI Communications Corp. & S. Pac. Telecommunications Corp. for Consent to Transfer Control to Qwest Communications, Inc.*, 10 F.C.C.R. 1072, 1075 (1994); citing *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 84 F.C.C.2d 445, 498 (1981)).

<sup>15</sup> *Id.* at 21.

**B. AT&T's Assertion that a Single National Geographic and Product Market is the Relevant Market, But Not for Purposes of Assessing BOC Entry into that Market, Is Baseless and Transparent**

Despite its endorsement of the nationwide domestic interstate interexchange service market as the sole relevant market for domestic interstate interexchange telecommunications service, AT&T argues that this market is "not relevant" in assessing BOC entry into that market.<sup>16</sup> It claims that an assessment of competitive effects in this single nationwide market is only valid "[w]here the market power of a local bottleneck monopolist to impede interexchange competition is not at issue."<sup>17</sup> It argues that:

[N]o meaningful conclusions could be drawn from a LEC's share of the entire nationwide interexchange services market. . . . because such figures could never properly account for the clear market power generated by monopoly control of bottleneck facilities in a particular region. Nor . . . would it be meaningful to measure LEC shares in a more limited [regional] "market" that does not exist. . . . Even in the more limited "market," the LEC's initial share as a new entrant might well be too low to generate the appropriate concern under standard market concentration models designed to measure the market power of non-bottleneck monopolists.<sup>18</sup>

Accordingly, AT&T makes the baseless and transparent claim that the single national geographic and product market that is the relevant market for interexchange service is "simply not relevant to

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<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.* at 14. AT&T states that the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act"), "codifies" the MFJ principle that "BOCs would remain excluded from the interexchange market as long as they continue to have the incentive and ability to use such bottlenecks to impede interexchange competition." AT&T Comments at 6-7. In fact, however, the 1996 Act displaces MFJ principles entirely, supplanting them with specific conditions for BOC entry. See 1996 Act at § 151 (adding § 271 to the Communications Act of 1934, as amended).

<sup>18</sup> *Id.* at 21 n.41 (citation omitted).



the issue of whether the BOCs could abuse their power in the local market to impede interexchange competition."<sup>19</sup>

Apparently, AT&T believes that while the BOCs seek to enter the nationwide interstate interexchange service market, which is the only relevant interexchange market, that market is nevertheless not relevant for purposes of considering BOC petitions to enter that market.<sup>20</sup> In support of its argument that "an examination of the current characteristics of the interexchange market will not be helpful" in reviewing BOC applications under new Section 271 of the Communications Act<sup>21</sup> to determine the existence (or lack) of "meaningful facilities-based competition," or for the Commission to make its public interest determination (including competitive and antitrust considerations),<sup>22</sup> AT&T makes three specious arguments.

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<sup>19</sup> *Id.* at 4.

<sup>20</sup> AT&T states that while the interexchange market definition can be relevant to the Commission's objective of determining whether any "current providers of interexchange service, none of whom control bottleneck facilities, nonetheless possess market power in individual services," the existing definitions are correct and should not be modified. AT&T Comments at 5. In fact, however, at least one major provider of interexchange service, Sprint, *does* control bottleneck facilities. In approving Sprint's acquisition of Centel in 1993, the Commission noted that the merger would "give Sprint control over only 4 percent of the access lines nationwide." *Centel Corp.*, 8 F.C.C.R. 1829, 1833 (C.C.B.), *aff'd*, 8 F.C.C.R. 6162 (1993). The Commission did not, however, find it necessary to address the antitrust implications of Sprint acquiring control over 100% of the access lines in the Centel markets. Similarly, when the FCC approved GTE's acquisition of Sprint in 1983, it found that the relevant market was nationwide interexchange service, not the geographic areas where GTE provided local exchange service. *Application of GTE Corp. & S. Pac. Co. for Consent to Transfer Control of S. Pac. Communications Co. & S. Pac. Satellite Co.*, 94 F.C.C.2d 235, 250 (1983). It found "no merit to the claim that the acquisition is anticompetitive on its face simply because GTE's proposed new structure" would vertically integrate interexchange and LEC services. *Id.* at 254.

<sup>21</sup> 47 U.S.C. § 271 (allowing for BOCs provision of in-region interLATA services upon the satisfaction of certain conditions).

<sup>22</sup> AT&T Comments at 7-8.

First, AT&T postulates that market definitions are imperfect techniques which should not be used when other evidence of market power, such as BOC control of bottleneck access facilities, exists. Second, AT&T argues the inquiry into the interexchange market is misdirected, and should instead focus upon defining relevant local markets for Section 271 purposes. Finally, AT&T states that BOC entry into the interexchange service market will blur the distinctions between the local and interexchange markets, and therefore any focus upon BOC market power must look to the combined product market.<sup>23</sup> As shown below, these arguments are transparent attempts to divert the Commission from assessing the competitive public interest ramifications of BOC entry into the oligopolistic interexchange market. AT&T's arguments are baseless and inconsistent with previous FCC decisions and AT&T's own previous positions.

**1. AT&T's Argument that BOC Control of Bottleneck Access Facilities Should Be the Yardstick Is an Attempt to Misdirect the Focus Away from the Relevant Nationwide Interexchange Market**

AT&T argues that "market definitions . . . are . . . imperfect techniques for assessing the presence or absence of market power. . . . and are unnecessary and inappropriate when . . . direct proof [of market power] is available."<sup>24</sup> In such cases, AT&T states that other market conditions should be examined to assess whether a particular firm exercises market power in the relevant market. "The important question . . . is . . . whether [a firm] has power over pricing."<sup>25</sup> According to AT&T, the Commission has consistently "treat[ed] control of bottleneck facilities as prima facie

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<sup>23</sup> See *id.* at 8-13.

<sup>24</sup> *Id.* at 8-9.

<sup>25</sup> *Id.* at 9 (quoting *Town Sound & Custom Tops, Inc. v. Chrysler Motors Corp.*, 959 F.2d 468, 479 n.13 (3d Cir. 1992)).

evidence of market power.”<sup>26</sup> Thus, because “BOCs control bottleneck access facilities that are essential inputs into the provision of interexchange services,” AT&T asserts that “BOCs possess substantial market power over all interexchange services offered to customers in their regions.”<sup>27</sup>

AT&T’s arguments are a misguided attempt to divert attention away from the true issue here: whether BOCs have market power in the relevant market, namely nationwide interexchange service. While BOCs may currently have market power in *another* market (*i.e.*, local exchange), such power does not equate to market dominance in the provision of interexchange service, any more than it renders the BOCs dominant in other markets where local exchange service or exchange access is an input. Instead, the Commission must determine, based on a factual record, whether the BOCs’ local exchange presence translates into market power in the relevant market—nationwide domestic interstate interexchange telecommunications service.

The Commission recently rejected the “all services” approach to assessing market power, so that dominance (*i.e.*, market power) in one market is not *prima facie* evidence of market power in other relevant markets. Specifically, as BellSouth explained in its out-of-region comments in CC Docket 96-21, the Commission expressly rejected the “all-services” approach to dominance in the *AT&T Non-Dominance Proceeding*, where the Commission held that the central issue is whether a firm “has the ability to control price with respect to the overall relevant market.”<sup>28</sup> In fact, the FCC had to depart from its “all-services” approach in that proceeding in order to declare AT&T non-

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<sup>26</sup> *Id.* at 9-10 (quoting *Policy and Rules Concerning Rates for Competitive Common Carrier Servs. and Facilities Authorizations Therefor, First Report and Order*, 85 F.C.C.2d 1, 21 (1980)).

<sup>27</sup> *Id.* at 10-11.

<sup>28</sup> *AT&T Non-Dominance Proceeding*, 1 Com. Reg. (P&F) at 72, 74; see BellSouth Comments in CC Docket 96-21 at 7-9 (filed Mar. 13, 1996).

dominant, because it found that AT&T remains dominant in the provision of international services and has the ability to control prices in portions of the domestic interexchange services market.<sup>29</sup>

Nevertheless, AT&T, after being found non-dominant, now seeks to protect itself from new competition in this and other proceedings<sup>30</sup> pending before the Commission by proposing to scrap the test under which it was found non-dominant, in favor of returning to the "all-services" test that the FCC rejected in the *AT&T Non-Dominance Proceeding*. The Commission should not be misled by this transparent ruse. Instead, the Commission must determine whether BOCs' presence in an increasingly competitive local exchange marketplace gives the BOCs the ability to raise prices in the relevant interexchange service market, where AT&T agrees there is a single nationwide geographic market.

**2. The Section 271 Checklist Concerning Local Competition Properly Focuses on Smaller Geographic Markets, Unlike the Section 271 Public Interest Determination, Which Focuses on the Effects of BOC Entry into the Nationwide Interexchange Market**

AT&T states that the "inquiry into the interexchange market is misdirected . . . because the issue is not simply whether the BOCs have direct market power over interexchange services, but whether they would be able to leverage their power in the local market into the interexchange market."<sup>31</sup> According to AT&T, BOCs have "every incentive to use their monopoly over local services to gain other improper advantages in interexchange services,"<sup>32</sup> and courts have realized that "where the abuse of market power would occur through leveraging, . . . the critical market is

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<sup>29</sup> *AT&T Non-Dominance Proceeding*, 1 Com. Reg. (P&F) at 92-93; BellSouth Comments in CC Docket 96-21 at 7-8.

<sup>30</sup> See AT&T Comments in CC Docket 96-21 at 5-6 (filed Mar. 13, 1996).

<sup>31</sup> AT&T Comments at 11.

<sup>32</sup> *Id.*

not the 'downstream' market . . . but the input market in which the monopolist controls bottleneck facilities."<sup>33</sup> Hence, in AT&T's view, the critical question is whether conditions in access and local services have changed sufficiently such that "the BOCs could enter the interexchange market without undermining the vigorous interexchange competition that has developed over the course of the last twelve years."<sup>34</sup>

Based on the foregoing, AT&T believes the *NPRM* erred by "assuming" that the examination of BOCs' market power with respect to in-region interexchange service will "be made by looking at the interexchange market, rather than the interstate access and local service markets in which . . . bottlenecks exist."<sup>35</sup> AT&T would, therefore, have the Commission focus "on defining the relevant *local* markets for purposes of Section 271"<sup>36</sup> to determine whether BOCs have market power with respect to in-region interexchange services.

Again, AT&T attempts to confuse the issue and muddle the statutory standards. The Commission's determination under Section 271(d)(3)(A), as to whether the Section 271(c)(2)(B) *checklist* has been satisfied, requires an examination of whether the framework for local competition exists.<sup>37</sup> This determination properly focuses on smaller geographic markets. The Commission's Section 271(d)(3)(C) *public interest* determination,<sup>38</sup> however, must focus on *the effect of BOC entry on the interexchange market*. The competitive checklist in Section 271 addresses all of the *local* competitive concerns that the Commission may address. Congress expressly prohibited the FCC

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<sup>33</sup> *Id.* at 12 & n. 25.

<sup>34</sup> *Id.* at 12.

<sup>35</sup> *Id.* at 13.

<sup>36</sup> *Id.* (emphasis added).

<sup>37</sup> *See* 47 U.S.C. § 271(c)(2)(B).

<sup>38</sup> *See* 47 U.S.C. § 271(d)(3)(C).

from limiting or extending the terms of the checklist.<sup>39</sup> In fact, Congress explicitly noted, in describing the FCC's obligation to make a public interest determination, that "*the Commission is specifically prohibited from limiting or expanding the terms used in the competitive checklist.*"<sup>40</sup> Accordingly, the FCC's public interest determination cannot focus on competitive effects in the local market that would effectively modify the checklist. Instead, the public interest determination must focus on the competitive effects of BOC entry in the *interexchange* market.

In this regard, the Commission cannot presume that BOCs will be able to leverage local bottleneck control into the interexchange market. In fact, far from "undermining . . . vigorous interexchange competition,"<sup>41</sup> BOC entry will undermine the interexchange oligopoly. Given that the overarching purpose of the 1996 Act is to "open[] all telecommunications markets to competition,"<sup>42</sup> injecting new competition into the national interexchange market is the central public interest that the Commission must serve.<sup>43</sup>

As BellSouth demonstrated in its Phase II comments in this proceeding, domestic interstate interexchange telecommunications is currently an oligopolistic market characterized by tacit collusion and oligopoly pricing, to the detriment of consumers.<sup>44</sup> BellSouth submitted extensive

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<sup>39</sup> See 47 U.S.C. § 271(d)(4).

<sup>40</sup> H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 145 ("Conference Report") (emphasis added).

<sup>41</sup> AT&T Comments at 12.

<sup>42</sup> Conference Report at 113.

<sup>43</sup> See *National Broadcasting Co. v. United States*, 319 U.S. 190, 226 (1943) (holding that the public interest standard contained in a statute must be read in light of the "purpose of the Act, the requirements it imposes, and the context of the provision in question") (quoting *New York Central Securities Corp. v. United States*, 287 U.S. 12, 45 (1932)); *NAACP v. FPC*, 425 U.S. 662 (1976) (stating that the public interest standard is "not a broad license to promote the general public welfare," but must "take meaning from the purposes of the regulatory legislation").

<sup>44</sup> BellSouth Comments in CC Docket 96-61 (Phase II) at 4-16 (filed Apr. 25, 1996).

evidence concerning the tacit price coordination of the big three IXC—AT&T, MCI, and Sprint—which shows conclusively that there is no meaningful price competition in the interexchange marketplace.<sup>45</sup> Rather, MCI and Sprint have repeatedly followed the upward pricing moves of the price leader, AT&T, in lock-step throughout the 1990s, despite decreasing costs; such price leadership behavior is characteristic of oligopolies with a low level of competition.<sup>46</sup> Accordingly, the Commission's focus should be on the need to break the oligopoly. As the Commission itself noted, the "best solution to any problem of tacit price collusion" is to "allow[] for competitive entry in the interstate interexchange market by the facilities-based BOCs and others."<sup>47</sup> The Commission should not be swayed by AT&T's muddling of the statutory requirements in order to prevent BOC entry into the interexchange market, which would serve only to prolong existing tacit price collusion.

Finally, AT&T states that customer desire for one-stop shopping will mean that any advantage the BOCs may have in the local market can be leveraged into the interexchange market.<sup>48</sup> AT&T, however, will have greater advantages in promoting one-stop shopping to its customers than BOCs. AT&T currently has more customers than any BOC, AT&T has better national name recognition, and many customers already perceive AT&T as a LEC.<sup>49</sup> AT&T is well on its way to

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<sup>45</sup> See *id.* at 4-16, Ex. A, Ex. B & Attachment.

<sup>46</sup> See *id.*

<sup>47</sup> *NPRM* at ¶ 81.

<sup>48</sup> AT&T Comments at 11-12.

<sup>49</sup> See, e.g., *AT&T Non-Dominance Order*, 1 Com. Reg. (P & F) at 82-83 (noting that AT&T retains a 60 percent overall market share in the long-distance industry); *Brand Name and Service Study: The RBOCs May Be in Trouble*, Telco Business Report, Oct. 9, 1995 ("50 percent of customers would choose AT&T if they could buy local and long-distance from the same provider," while "[n]o more than 6 percent named AT&T competitors or the Regional Bell Operating Companies."); *Long Distance Industry Plots Local Market Strategy*, Wash. Telecom News, Sept.

leveraging these advantages toward dominance in one-stop shopping long before the BOCs can provide one-stop shopping to their customers.<sup>50</sup>

**3. AT&T's Argument that the Commission Should Focus on a New Integrated Local/Interexchange Services Product Market Is Self-Serving and Inconsistent with FCC Decisions and AT&T's Own Prior Positions**

AT&T also contends that "consideration of today's interexchange service market would be peculiarly inappropriate in the context of a future Section 271 application, for the likely effect of BOC entry would be to obliterate today's distinctions between local and interexchange markets."<sup>51</sup> The consequence, according to AT&T, will be the establishment of a separate market for all business (or residential) services in a specific geographic area and the creation of "an industry structure in which carriers would separately offer 'one stop shopping' to residential or business customers."<sup>52</sup> Therefore, AT&T concludes that the "focal point in any Section 271 application will . . . be whether BOCs would have market power in such broadened product markets."<sup>53</sup>

AT&T's position represents an astonishing about-face. In the AT&T-McCaw merger proceeding, AT&T argued that, regardless of predictions for the future, there are a variety of

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11, 1995 ("AT&T has unbeatable name recognition with American consumers. In fact, many people still believe AT&T provides their local service.").

<sup>50</sup> See, e.g., *AT&T Moves Into DBS Video Market, Information and Interactive Services Report*, Mar. 29, 1996 (citing AT&T's intention to provide local exchange service in all 50 states); *AT&T Competes Initial Steps to Offer Local Phone Service*, EDGE, Mar. 11, 1996 (noting AT&T has met its commitment to begin the process of providing local phone service in every state by March 1, having filed with the state commissions in all 50 states); *Now the FUN Begins—Carriers Vie for Newly Opened Markets*, CommunicationsWeek, Feb. 12, 1996, at 1 (stating AT&T plans "to offer local services by March 1").

<sup>51</sup> AT&T Comments at 13.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*



separate local markets and there is no wireless long-distance submarket.<sup>54</sup> The Commission squarely rejected establishment of integrated local/interexchange market and agreed with AT&T that it must look at effects on existing markets, *not markets that may or may not emerge*.<sup>55</sup> Moreover, the Commission found that if broadened markets resulted, that would serve the public interest.<sup>56</sup> AT&T's change in position in this proceeding represents little more than a self-serving effort to keep potential new competitors—the BOCs—out of the interexchange market for as long as possible.

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<sup>54</sup> See AT&T's and McCaw's Opposition to Petitions to Deny and Reply to Comments in *Applications for Consent to Transfer of Control of Radio Licenses of AT&T and McCaw*, File No. ENF-93-44, DA 93-1119, at 26-28, 49-53, 119-25, (filed Dec. 2, 1993).

<sup>55</sup> See *Craig O. McCaw*, 9 F.C.C.R. 5836, 5845-48, 5853-58, *aff'd sub nom. SBC Communications, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).


<sup>56</sup> *Id.* at 5862-63, 5871-73.


## CONCLUSION

For the foregoing reasons, BellSouth urges the Commission to reject AT&T's attempt to shield itself from BOC competition and instead to use its well-established geographic and product market definition for assessing the competitive effects of BOC entry.

Respectfully submitted,

**BELLSOUTH CORPORATION**

By:   
John F. Beasley  
William B. Barfield  
Jim O. Llewellyn  
1155 Peachtree Street, NE, Suite 1800  
Atlanta, GA 30309-2641  
(404) 249-4445


By:   
David G. Frolio  
David G. Richards  
1133 21st Street, NW  
Washington, DC 20036  
(202) 463-4132

*Its Attorneys*

May 3, 1996

CERTIFICATE OF SERVICE

I, Donna M. Crichlow, hereby certify that copies of the foregoing Reply Comments of BellSouth (Phase I) in CC Docket 96-61 were served via first class U.S. mail, postage prepaid, this 3rd day of May, 1996, to the parties on the attached list.



Donna M. Crichlow

\* The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

\* The Honorable James H. Quello  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

\* The Honorable Susan Ness  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

\* The Honorable Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

\* Regina Keeney  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

\* Janice Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

\* International Transcription Services, Inc.  
2100 M Street, N.W., Suite 140  
Washington, D.C. 20037

\* Dorothy Conway  
Federal Communications Commission  
1919 M Street, N.W., Room 234  
Washington, D.C. 20554

\* Timothy Fain  
OMB Desk Officer  
10236 NEOB  
725 - 17th Street, N.W.  
Washington, D.C. 20503

\* Hand Delivered

Margaret L. Tobey, P.C.  
Phuong N. Pham, Esq.  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1333 New Hampshire Avenue, N.W., Suite 400  
Washington, DC 20036

Mary E. Newmeyer  
Alabama Public Service Commission  
100 N. Union Street  
P. O. Box 991  
Montgomery, AL 36101

Gary L. Phillips  
Ameritech  
1401 H Street, N.W., Suite 1020  
Washington, DC 20005

Lon C. Levin  
Vice President and Regulatory Counsel  
AMSC Subsidiary Corporation  
10802 Park Ridge Boulevard  
Reston, VA 22091

Mark C. Roseblum  
Leonard J. Cali  
Richard H. Rubin  
AT&T Corp  
Room 325213  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Edward Shakin  
Bell Atlantic Telephone Companies and Bell Atlantic  
Communications, Inc.  
1320 North Court House Road, Eighth Floor  
Arlington, VA 22201

Ann P. Morton  
Cable & Wireless, Inc.  
8219 Leesburg Pike  
Vienna, VA 22182

Genevieve Morelli  
Vice President and General Counsel  
Competitive Telecommunications Association  
1140 Connecticut Avenue, N.W., Suite 220  
Washington, DC 20036

Robert M. Halperin  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Albert H. Kramer  
Robert F. Aldrich  
Dickstein, Shapiro & Morin, L.L.P.  
2101 L Street, N.W.  
Washington, DC 20037-1526

Kathryn Matayoshi, Director  
Charles W. Totto, Executive Director  
Division of Consumer Advocacy  
Department of Commerce and Consumer Affairs  
250 South King Street  
Honolulu, HI 96813

Raymond G. Bender, Jr.  
J.G. Harrington  
Christopher Libertelli  
Dow, Lohnes & Albertson  
1200 New Hampshire Avenue, N.W., Suite 800  
Washington, DC 20037

Bruce D. Jacobs  
Glenn S. Richards  
Fisher Wayland Cooper Leader & Zaragoza, L.L.P.  
Suite 400  
2001 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Cynthia B. Miller  
Associate General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Michael J. Shortley, III  
Frontier Corporation  
180 South Clifton Avenue  
Rochester, NY 14646

Kathy L. Shobert  
Director, Federal Affairs  
General Communication, Inc.  
901 15th Street, N.W., Suite 900  
Washington, DC 20005

Rodney L. Joyce  
Ginsburg, Feldman and Bress  
1250 Connecticut Avenue, N.W.  
Washington, DC 20036

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N.W., Suite 1200  
Washington, DC 20036

Charles H. Helein  
General Counsel  
Helein & Associates, P.C.  
8180 Greensboro Drive, Suite 700  
McLean, VA 22102

Charles C. Hunter  
Hunter & Mow, P.C.  
1620 I Street, N.W., Suite 701  
Washington, DC 20006

William H. Smith, Jr., Chief  
Bureau of Rate and Safety Evaluation  
Iowa Utilities Board  
Lucas State Office Building  
Des Moines, IA 50319

Michael S. Fox  
Director, Regulatory Affairs  
John Staurulakis, Inc.  
6315 Seabrook Road  
Seabrook, MD 20706

C. Douglas Jarrett  
Susan M. Hafeli  
Brian Turner Ashby  
Keller and Heckman  
1001 G Street, N.W., Suite 500 West  
Washington, DC 20001

Danny E. Adams  
Edward A. Yorkgitis, Jr.  
Kelley Drye & Warren  
1200 19th Street, N.W.  
Washington, DC 20036

Danny E. Adams  
Steven A. Augustino  
Kelley Drye & Warren  
1200 Nineteenth Street, N.W., Suite 500  
Washington, DC 20036

Margot Smiley Humphrey  
Koteen & Naftalin, L.L.P.  
1150 Connecticut Avenue, N.W., Suite 1000  
Washington, DC 20036

Margot Smiley Humphrey  
Koteen & Naftalin, LLP  
Suite 1000  
1150 Connecticut Avenue, N.W.  
Washington, DC 20036

Thomas K. Crowe  
Kathleen L. Greenan  
Law Offices of Thomas K. Crowe, P.C.  
Suite 800  
2300 M Street, N.W.  
Washington, DC 20037

Raul R. Rodriguez  
Stephen D. Baruch  
David S. Keir  
Leventhal, Senter & Lerman  
Suite 600  
2000 K Street, N.W.  
Washington, DC 20006

Lawrence C. St. Blanc, Secretary  
Gayle F. Kellner, Esq.  
Louisiana Public Service Commission  
P. O. Box 91154  
Baton Rouge, LA 70821-9154

Donald J. Elardo  
Frank W. Krogh  
Mary J. Sisak  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Eric B. Witte  
Assistant General Counsel  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

Paul Rodgers, General Counsel  
Charles D. Gray, Assistant General Counsel  
James Fradford Ramsay, Deputy Assistant General Counsel  
National Association of Regulatory Utility Commissioners  
1102 ICC Building  
Post Office Box 684  
Washington, DC 20044

David Cosson  
L. Marie Guillory  
National Telephone Cooperative Association  
2626 Pennsylvania Avenue, N.W.  
Washington, DC 20037

Veronica M. Ahern  
Nixon Hargrave Devans & Goyle LLP  
One Thomas Circle, N.W., Suite 700  
Washington, DC 20005

Joseph Di Bella  
Donald C. Rowe  
NYNEX Telephone Companies  
1300 I Street, N.W., Suite 400 West  
Washington, DC 20005

Philip F. McClelland  
Assistant Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Robert F. Kelley, Jr.  
Advisor to the Governor  
Office of the Governor  
P. O. Box 2950  
Agana, GU 96910

Andrea M. Kelsey  
David C. Bergmann  
Office of the Ohio Consumers' Counsel  
77 South High Street, 15th Floor  
Columbus, OH 43266-0550

Lisa M. Zaina  
Stuart Polikoff  
Organization for the Protection and Advancement of  
Small Telephone Companies  
21 Dupont Circle, N.W., Suite 700  
Washington, DC 20036



**Margaret E. Garber**  
Pacific Telesis Group, Inc.  
1275 Pennsylvania Avenue, N.W.  
Washington, DC 20004

**Marlin D. Ard**  
**John W. Bogy**  
Pacific Telesis Group, Inc.  
140 New Montgomery Street, Room 1530A  
San Francisco, CA 94105

**Alan Kohler, Assistant Counsel**  
**Veronica A. Smith, Deputy Chief Counsel**  
**John F. Povilaitis, Chief Counsel**  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**Alan Kohler, Assistant Counsel**  
**Veronica A. Smith, Deputy Chief Counsel**  
**John F. Povilaitis, Chief Counsel**  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**Steven T. Nourse, Assistant Attorney General**  
**Betty D. Montgomery, Attorney General of Ohio**  
**Ann E. Henkener, Assistant Attorney General**  
**Duane W. Luckey, Section Chief**  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43266-0573

**James D. Ellis**  
**Robert M. Lynch**  
**David F. Brown**  
SBC Communications, Inc.  
175 E. Houston, Room 1254  
San Antonio, TX 78205

**Susan Drombetta**  
**Manager - Rates and Tariffs**  
Scherers Communications Group, Inc.  
575 Scherers Court  
Worthington, OH 43085

**David W. Carpenter**  
**Peter D. Keisler**  
**David L. Lawson**  
Sidley & Austin  
One First National Plaza  
Chicago, IL 60603

**Madelyn M. DeMatteo**  
**Alfred J. Brunetti**  
**Maura C. Bollinger**  
Southern New England Telephone Company  
227 Church Street  
New Haven, CT 06506

**Leon M. Kestenbaum**  
**Kent Y. Nakamura**  
**Jay C. Keithley**  
Sprint Corporation  
1850 M Street, N.W., 11th Floor  
Washington, DC 20036